

January 12, 2004

By Electronic Delivery

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
Office of the Secretary
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Attention: Docket No. R – 1175

Federal Trade Commission
Office of the Secretary
Room 159 – H
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Attention: Project No. P044804

RE: Interim Final Rules for the Fair and Accurate Credit Transactions Act of 2003

Ladies and Gentleman:

FleetBoston Financial Corporation, a diversified financial holding company headquartered in Boston, Massachusetts, (“Fleet”) is pleased to have this opportunity to comment on the joint Interim Final Rules (“Interim Rules”), promulgated by the Board of Governors of the Federal Reserve System and the Federal Trade Commission (collectively, the “Agencies”), which establish the effective dates for those provisions of the Fair and Accurate Credit Transactions Act of 2003 (“Fact Act”) that determine the relationship between state law and the Fair Credit Reporting Act (“FCRA”) and for those provisions that authorize agency rulemakings or other implementing agency action. Fleet is the seventh largest bank holding company in the United States, with total assets exceeding \$190 billion. Fleet offers a comprehensive array of financial products and services to 20 million customers in more than 20 countries and territories. Among the company’s key lines of the business are: retail and commercial banking; capital markets, investment banking and commercial finance; trust and investment services, including nationwide brokerage; and private equity investing.

Fleet's primary banking subsidiary, Fleet National Bank. (the "Bank") is a national banking association with branches throughout the Northeast and Middle Atlantic states. The Bank's businesses are national in scope and include consumer, small business and commercial banking, international banking, corporate banking, principal investing, credit card services, commercial real estate lending, commercial leasing and mortgage banking. The Bank through wholly-owned operating subsidiaries conducts some of these businesses.

Overview of Our Comments

Fleet supports the Agencies' determination that December 31, 2003 is the appropriate effective dates for section 711 (3) that permanently reauthorizes the existing FCRA preemption provisions. The date is also appropriate for the provisions of the FACT Act that authorize agency rulemakings and implementing actions that do not include a specified effective date. Fleet appreciates the opportunity to comment on this very important matter.

The legislative history of the FACT Act makes it abundantly clear that Congress intended to remove the sunset provisions applicable to the existing FCRA preemption provisions and to permanently reauthorize these preemption provisions. We believe that the FCRA's existing preemption provisions help to preserve and bolster an efficient national credit market. Given the proximity between the enactment of the FACT Act and the impending sunset date for the existing FCRA preemptions, it would be impractical for the Agencies to provide notice and comment before establishing effective dates for this section. The Interim Rule is clearly appropriate.

Our Specific Comments on the Proposal

- The Interim Rule also established December 31, 2003 as the effective date for the provisions of the FACT Act designed to prevent or mitigate the effects of identity theft, as set forth in section 711 (2), and for the additional preemption provisions in section 151 (a)(2), 212(e), 214(c) and 311(b) of the Act. We believe that the effective date established for this provision is also important because of the potential uncertainty that could arise concerning the time when existing state laws, and states laws that will soon become effective, are preempted.

We understand that the Agencies have issued a letter to clarify the intent of this provision as it related to continuing authority of state laws covering the activities that are addressed in the FACT Act. We understand that the Agencies have taken the position that the December 31, 2003 effective date for the national uniform standards sections would not result in preemption of existing state laws until the FACT Act requires actual compliance with the provisions of the FACT Act relating to those requirements. This interpretation would require financial institutions to comply with simultaneous and potentially conflicting requirements; not only ongoing compliance with state laws that are currently in effect, but also new state laws scheduled to become effective during 2004 and prior to the proposed December 1, 2004 effective date referred to in a separate proposal issued by the Agencies.

These state statutes will impose a significant compliance burden on institutions if the institutions must prepare and implement compliance procedures to comply with the state statutes, while at the procedures that will bring those institutions into compliance with the uniform national standards established by the FACT Act. We believe that this requirement will result in inefficiencies,

unnecessary cost and will not provide clarity for consumers regarding their rights and protections. This will require significant additional resources and training and will create confusion within our own business practices.

- The Interim Rule further established December 31, 2003 as the effective date for those provisions of the FACT Act that authorize agency rulemakings or authorize other implementing agency action, but do not include an effective date (collectively, “Regulatory Provisions”). In adopting the Interim Rule without advance public notice or comment, the Agencies note that “establishing an early effective date for these regulatory provisions would allow the agencies to begin immediately to perform their responsibilities under the FACT Act.” The Agencies state that establishing the effective date for the Regulatory Provisions has no effect on the substantive provisions that will be implemented by agency action. We support the Agencies’ determination to establish December 31, 2003 as the effective date for the Regulatory Provisions. As most provisions of the FACT Act must become effective within one year of enactment, it is necessary for the Agencies to begin their regulatory duties immediately. Accordingly, the Interim Rule is appropriate.
- The Agencies also state that for those provision of the FACT Act that require an agency to issue regulation or take other implementing action, within a certain period following enactment, that “no joint regulations under section 3 of the FACT Act are required to make these provisions effective.” The Agencies’ determination is based on the belief that Congress specified “the date of enactment as the lawful effective date because that is the predicate for mandating that an agency actin be performed within a specified period of time after the date of enactment.” We support this determination.

Closing Comments

Fleet appreciates the opportunity to submit comments on this important topic. Fleet urges the Agencies to reconsider the position relative to multiple compliance requirements under future state laws. If you desire further detail or discussion of any part of this letter please do not hesitate to contact the undersigned or Coralee Harris, Privacy Group Leader, at 803-781-1082.

Sincerely,

Agnes Bundy Scanlan
Chief Compliance Officer
And Managing Director